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4 WAYMO LLC,
5 Plaintiff,
6 v.
7 UBER TECHNOLOGIES, INC., et al.,
8 Defendants.
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10 Case No.[17-cv-00939-WHA](#) (JSC)
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13 **ORDER RE: WAYMO'S MOTION TO**
COMPEL
14

15 Re: Dkt. Nos. 681, 682, 747, 748, 749
16

17 Waymo seeks the production of certain documents and answers to interrogatories from
18 Uber and Otto Trucking.

19 **A. Waymo's Expedited Document Requests**

20 1. *RFP No. 5*

21 Uber objects to producing emails that are responsive to Waymo's request for diligence
22 documents on the grounds that such documents are not appropriate for expedited discovery.
23 However, it also acknowledges that Waymo requested such documents pursuant to RFP No. 28 in
24 a non-expedited discovery request and that it responded to such request on June 23. Uber does not
25 disclose whether it produced such documents. If it has not, it shall. The documents are relevant to
what information Otto shared with Uber and therefore are relevant to Waymo's trade secret
claims.

26 2. *RFP No. 8*

27 Documents responsive to Waymo's request for documents regarding "Pre-Signing Bad
28 Acts" are relevant. Uber contends that it does not have any non-privileged responsive documents.
To the extent any such documents have not previously been placed on a privilege log Uber shall
do so now. Uber has not shown that the amount of such documents is so voluminous that it cannot

1 comply with its well-established obligation to log documents it is withholding on privilege
2 grounds.

3 **3. RFP No. 10**

4 Uber has agreed to produce all lab notebooks belonging to personnel who worked on
5 LiDAR.

6 **4. RFP No. 20**

7 Uber objects on the grounds of relevancy to production of software modules that were part
8 of the intellectual property identified in the Put Call Agreement Disclosure Schedules. The
9 objection is overruled. Otto's intellectual property disclosed to Uber is discoverable as it is
10 relevant to Waymo's claims and Uber's defenses.

11 **5. RFP No. 25**

12 Uber has satisfactorily responded to Waymo's request for closing conditions.

13 **B. Waymo's Expedited Interrogatories**

14 **1. Interrogatory No. 3**

15 With the filing of the Declaration of Kevin Faulkner, Uber's response is sufficient.

16 **2. Interrogatory No. 5**

17 Uber shall supplement its response to identify all compensation promised by any
18 Defendant to Mr. Levandowski as the information sought is relevant.

19 **3. Interrogatory No. 8**

20 Waymo's motion to compel a further response is denied. *See Adobe Sys. v. St. Paul Fire &*
21 *Marine Ins. Co.*, 2008 WL 1342877, at *2 (N.D. Cal. April 9, 2008).

22 **4. Interrogatory No. 20**

23 To the extent any of Uber's communications with Levandowski's attorneys are not already
24 logged, Uber shall put them on a privilege log. If Uber does not want to identify verbal
25 communications on the privilege log, it shall identify such communications in a supplemental
26 response to the Interrogatory.

27 **C. Otto Trucking's Response**

28 **1. Interrogatory Responses**

1 Waymo's complaint that Mr. Levandowski knows where the material he downloaded from
2 Waymo is located, and therefore Otto Trucking must know, is disingenuous. As Waymo is well
3 aware, Mr. Levandowski has refused to cooperate with any discovery in this matter on Fifth
4 Amendment grounds. To the extent Waymo contends that Otto Trucking has not done enough to
5 coerce Mr. Levandowski to speak, that is a matter that it has raised with the District Judge. (Dkt.
6 No. 847.)

7 With respect to other Otto Trucking personnel, Otto Trucking has represented that its
8 officers Mr. Ron, Ms. Morgan and Mr. Bentley do not have information responsive to the
9 interrogatories. (Dkt. No. 747 at 2.) The only specific interrogatory identified by Waymo is
10 Interrogatory No. 1 which seeks the locations and custody of the DOWNLOADED MATERIALS.
11 Thus, the representation is that these officials do not know the locations and custody of these
12 materials. That Mr. Levandowski told Mr. Ron that Mr. Levandowski had five discs containing
13 Google information and that Mr. Levandowski had destroyed the material does not mean that Mr.
14 Ron knows where such information is located.

15 2. *Document Requests*

16 Otto Trucking must produce responsive documents in the custody, control or possession of
17 its officers, namely, Mr. Ron, Ms. Morgan or Mr. Bentley. It cannot hide responsive documents
18 simply because these officers' work for Otto Trucking was done using their personal email
19 accounts, especially since they are all current Otto Trucking officers. It is thus unsurprising that
20 Otto Trucking does not cite a single case that supports that remarkable proposition. The cases
21 Otto Trucking does cite are all inapposite; none involve a corporation refusing to produce
22 documents involving corporation business in the possession, custody or control of the
23 corporation's officers. To accept Otto Trucking's argument would mean that it could not compel
24 its current officers to produce Otto Trucking's own trade secrets to Otto Trucking merely because
25 the officers conducted Otto Trucking business with their personal email accounts. Nonsense.

26 Otto Trucking must produce responsive documents in the custody, control or possession of
27 its officers and agents.

CONCLUSION

Waymo's motion is denied in part and granted in part as is explained above. Uber and Otto Trucking shall comply with this Order on or before July 18, 2017. Any objections to this Order must be filed with the district court on or before Monday, July 17, 2017. This Order is not stayed.

This Order disposes of Docket Nos. 682, 747, and 749.

IT IS SO ORDERED.

Dated: July 12, 2017

Jacqueline Scott Corley
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

United States District Court
Northern District of California